

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Cornelius R. Morant, #1499,)	C/A No.: 3:19-2848-JFA-SVH
)	
Plaintiff,)	
)	
vs.)	ORDER AND NOTICE
)	
The People of the State of South)	
Carolina, Bordon Jenkinson, and)	
Sumter County,)	
)	
Defendants.)	
)	

Cornelius R. Morant (“Plaintiff”), proceeding pro se and in forma pauperis, filed this complaint pursuant to 42 U.S.C. § 1983 against the People of the State of South Carolina (“People”), Family Court Judge Bordon Jenkinson (“Judge Jenkinson”), and Sumter County (“County”) (collectively “Defendants”), alleging violations of his civil and constitutional rights. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civ. Rule 73.02(B)(2)(e) (D.S.C.), the undersigned is authorized to review such complaints for relief and submit findings and recommendations to the district judge.

I. Factual and Procedural Background

Plaintiff alleges on August 6, 2019, Judge Jenkinson imprisoned him for a period of 90 days for failure to pay child support. [ECF No. 1 at 6]. He claims

the plaintiff¹ in the family court matter is deceased and he has full custody of the children. *Id.*

Plaintiff claims Judge Jenkinson deprived him of his liberty and opportunity to participate in employment and earn wages. *Id.* at 7. He requests the court terminate his child support obligation in the family court case and award damages in the amount of \$75,650. *Id.*

II. Discussion

A. Standard of Review

Plaintiff filed his complaint pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against possible abuses of this privilege, the statute allows a district court to dismiss a case upon a finding that the action fails to state a claim on which relief may be granted or is frivolous or malicious. 28 U.S.C. § 1915(e)(2)(B)(i), (ii). A finding of frivolity can be made where the complaint lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992). A claim based on a meritless legal theory may be dismissed sua sponte under 28 U.S.C. § 1915(e)(2)(B). *See Neitzke v. Williams*, 490 U.S. 319, 327 (1989).

¹ Plaintiff also indicates the South Carolina Department of Social Services (“DSS”) was a plaintiff in the family court case. [ECF No. 1 at 6].

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). In evaluating a pro se complaint, the plaintiff’s allegations are assumed to be true. *Fine v. City of N.Y.*, 529 F.2d 70, 74 (2d Cir. 1975). The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so. A federal court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts that set forth a claim currently cognizable in a federal district court. *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387, 390–91 (4th Cir. 1990). Although the court must liberally construe a pro se complaint, the United States Supreme Court has made it clear a plaintiff must do more than make conclusory statements to state a claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Rather, the complaint must contain sufficient factual matter, accepted as true, to state a claim that is plausible on

its face, and the reviewing court need only accept as true the complaint's factual allegations, not its legal conclusions. *Iqbal*, 556 U.S. at 678–79.

B. Analysis

1. Failure to State a Claim Against People and County

To state a plausible claim for relief under 42 U.S.C. § 1983,² an aggrieved party must sufficiently allege that he was injured by “the deprivation of any [of his or her] rights, privileges, or immunities secured by the [United States] Constitution and laws” by a “person” acting “under color of state law.” *See* 42 U.S.C. § 1983; *see generally* 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1230 (3d ed. 2014).

Plaintiff has alleged no specific injury as a result of the actions of Defendants People and County.³ Therefore, Plaintiff's complaint is subject to summary dismissal as to Defendants People and County.

² Plaintiff's Complaint is properly before this court pursuant to 42 U.S.C. § 1983. Section 1983 is the procedural mechanism through which Congress provided a private civil cause of action based on allegations of federal constitutional violations by persons acting under color of state law. The purpose of § 1983 is to deter state actors from using badge of their authority to deprive individuals of their *federally guaranteed* rights and to provide relief to victims if such deterrence fails.

³ Plaintiff lists People and County in the complaint's caption. [ECF No. 1 at 1]. However, he lists only Judge Jenkinson in the section of the complaint identifying Defendants. *Id.* at 2–3. He further specifies “[n]oone [sic] else was involved.” *Id.* at 6. In light of this information, the undersigned is inclined to conclude that Plaintiff did not intend to name People and County as Defendants.

2. Absolute Judicial Immunity as to Judge Jenkinson

It is well established that judges have absolute immunity from claims arising out of their judicial actions. *Mireless v. Waco*, 502 U.S. 9, 12 (1991); *Chu v. Griffith*, 771 F.2d 79, 81 (4th Cir. 1985). Judicial immunity is a protection from suit, not just from ultimate assessment of damages, and such immunity is not pierced by allegations of corruption or bad faith. *See Mireless*, 502 U.S. at 11; *see also Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978) (“A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the ‘clear absence of all jurisdiction.’”) (citation omitted). In *Stump*, the court clarified that “whether an act by a judge is a ‘judicial’ one relate[s] to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity.” 435 U.S. at 362.

Plaintiff’s complaint addresses action taken by Judge Jenkinson in a family court case. [ECF No. 1 at 6]. He maintains Judge Jenkinson violated his civil and constitutional rights by holding him in civil contempt and ordering he be detained for violating a child support order. *Id.* Plaintiff indicates he interacted with Judge Jenkinson in his official capacity and describes his action as falling within the scope of those normally performed by judges.

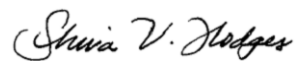
Accordingly, Plaintiff's complaint is subject to summary dismissal, as Judge Jenkinson is entitled to absolute judicial immunity.

NOTICE CONCERNING AMENDMENT

Plaintiff may attempt to correct the defects in his complaint by filing an amended complaint by **October 29, 2019**, along with any appropriate service documents. Plaintiff is reminded an amended complaint replaces the original complaint and should be complete in itself. *See Young v. City of Mount Ranier*, 238 F.3d 567, 572 (4th Cir. 2001) ("As a general rule, an amended pleading ordinarily supersedes the original and renders it of no legal effect.") (citation and internal quotation marks omitted). If Plaintiff files an amended complaint, the undersigned will conduct screening of the amended complaint pursuant to 28 U.S.C. § 1915A. If Plaintiff fails to file an amended complaint or fails to cure the deficiencies identified above, the undersigned will recommend to the district court that the claims be dismissed without leave for further amendment.

IT IS SO ORDERED.

October 8, 2019
Columbia, South Carolina



Shiva V. Hodges
United States Magistrate Judge